

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
FairPoint Communications, Inc.)	WC Docket No. 10-90
)	
Petition for Waiver of Section 54.301(e)(1))	WC Docket No. 05-337
Of the Commission's Rules,)	
47 C.F.R. §54.301(e)(1))	

PETITION FOR WAIVER TO TRUE-UP LOCAL SWITCHING SUPPORT

FairPoint Communications, Inc. (“FairPoint”) files this petition on behalf of four of its local exchange carrier (“LEC”) subsidiaries operating in Maine and Vermont: China Telephone Company, FairPoint Vermont, Inc., Northland Maine and Sidney Telephone Company, and Standish and Maine Telephone Company (“the FairPoint Companies”). FairPoint hereby requests that the Commission waive the December 31, 2012 deadline for the submission of true-up data used to adjust Local Switching Support (“LSS”) for calendar year 2011, as set forth in Section 54.301(e)(1) of the Commission’s Rules, for the limited purpose of allowing the FairPoint Companies to true-up their 2011 LSS as contemplated under the Commission’s rules.¹ No party will be adversely affected by grant of the requested waiver. Due to recent staffing changes, FairPoint inadvertently missed the December 31 deadline and provided the 2011 LSS true-up data seven business days late. For the reasons stated below, grant of the limited relief

¹ 47 C.F.R. § 54.301(e)(1). *See also Connect America Fund*, WC Docket No. 10-90, et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, at paras. 128 and 247 (rel. Nov.18, 2011) (“*USF/ICC Transformation Order*”).

requested herein will serve the public interest and prevent undue hardship. Expedited action is requested.

I. BACKGROUND

The FairPoint Companies are price cap incumbent LECs serving approximately 33,068 access lines in Maine and Vermont. Under Section 54.301 of the Commission's rules, LSS for years prior to 2012 is calculated based on an initial projection of each LEC's annual unseparated local switched revenue requirement, subject to an annual "true-up" process to adjust support amounts based on actual incumbent LEC data.² The rule requires that LECs submit their true-up data by December 31 of each year through 2012, to allow the Universal Service Administrative Company ("USAC") to calculate the LSS amounts due to them for the prior year, and make any necessary support adjustments. Because the Commission has ordered the phase-out of LSS, the last such filing was required under the Commission's rules on December 31, 2012 – there will be no such LSS filing for any future period.

The FairPoint Companies previously have made this true-up filing requirement on a timely basis. However, due to the departure in 2012 of key staff, both at FairPoint and at the consultant who has assisted FairPoint with calculating its unseparated local switched revenue requirement, the December 31 deadline was missed this year. After being contacted by USAC on January 3, FairPoint made the true-up filing seven business days late, on January 10, 2013.

The consequence of missing this deadline by seven business days could be a substantial loss of support to the FairPoint Companies, in the absence of a waiver of the filing requirement.

² 47 C.F.R. §§54.301(a)(1), (e)(1). Pursuant to the *USF/ICC Transformation Order*, LSS was phased out for price cap LECs and frozen for rate-of-return LECs as of January 1, 2012, and phased out for rate-of-return LECs as of July 1, 2012. 47 C.F.R. §54.301(a)(1). See *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90 *et al.*, 26 FCC Rcd 17663 (2011) ("*USF/ICC Transformation Order*"). These changes did not affect the true-up process for prior years, however.

Specifically, USAC advises that the FairPoint Companies likely would be entitled to *none* of the 2011 LSS support they received based on their projected revenue requirement, and would be required to refund *all* of the 2011 LSS they received, unless the Commission waives the December 31, 2012 filing deadline as requested herein. This represents more than \$1 million in support received by the FairPoint Companies in 2011. USAC staff indicates that the true-up calculation could not be performed for the FairPoint Companies' LSS based on their 2011 actual unseparated local switched revenue requirement absent a waiver from the Commission because FairPoint failed to timely file the 2011 true-up data, and therefore the FairPoint Companies would likely be required to return all 2011 LSS.

FairPoint believes that, if the requested waiver is granted and USAC does perform the true-up as contemplated under the Commission's rules, three of the FairPoint Companies would be expected to refund support and one would be expected to receive a modest amount of additional support. The net payment from the FairPoint Companies to USAC would be approximately \$47,000 rather than \$1,034,000. Thus, a waiver of the rules is required to avoid a substantial penalty to FairPoint and its operating LECs, which would adversely impact operations in the affected study areas and beyond.

II. WAIVER OF THE RULE WOULD SERVE THE PUBLIC INTEREST

The Commission may waive its rules for "good cause shown."³ More specifically, the Commission may exercise its discretion to waive a rule where, due to special circumstances, deviation from the general rule would better serve the public interest than strict adherence to the general rule.⁴ The Commission may take into account consideration of hardship, equity, or more

³ 47 C.F.R. § 1.3.

⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

effective implementation of overall policy on an individual basis.⁵ The instant request meets this standard.

The Commission should grant a waiver in this case so as to avoid the undue hardship on the FairPoint Companies and the customers they serve, while ensuring that the support in question is adjusted to reflect actual revenue requirements as intended under the rule. The FairPoint Companies estimate that they should be required to refund USAC approximately \$47,000 as a result of the 2011 true-up. USAC advises that, absent a waiver, FairPoint could be obligated to refund over \$1 million in LSS. This support represents a significant portion of the revenue on which the FairPoint Companies have relied to provide services in rural Maine and Vermont. Penalizing the FairPoint Companies for a brief reporting delay effectively could jeopardize their ability to serve customers going forward.

Waiver of the December 31 deadline under Section 54.301(e)(1) will not adversely affect any party. USAC will perform the same calculation that it otherwise would have done, delayed by merely seven business days. The inadvertent failure to file these true-up reports in a timely manner does not reflect any systematic compliance problem – this is the first such failure by the FairPoint Companies, and FairPoint’s other LEC subsidiaries filed their true-up data with USAC in a timely manner. Special circumstances – namely, departure of key personnel shortly before the filing deadline – were at cause, and are not likely to be a problem in the future. Indeed, this type of filing no longer will be required.

FairPoint has attempted to comply with the Commission’s rules to ensure that its universal service support is based on the most accurate information available. Grant of the waiver requested herein would permit USAC to recalculate 2011 LSS for the FairPoint

⁵ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

Companies based on actual rather than merely projected data. It would result in a return of funds based on FairPoint's actual revenue requirements, rather than a penalty grossly disproportionate to the error. Grant of the waiver thus would serve the purpose of the rule.

III. CONCLUSION

For the foregoing reasons, a waiver of Section 54.301(e)(1) is appropriate to prevent undue hardship and to serve the policy underlying the Commission's rule. In the absence of a waiver, FairPoint would be unduly and disproportionately penalized for having filed data seven business days late, which would neither serve the purpose of the rule nor advance the public interest. To avert the threatened penalty, the FairPoint Companies respectfully request expedited action on this petition.

Respectfully submitted,

/s/

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